

Response to Restriction Requirement
U.S. Appln. Serial No. 10/690,337

REMARKS

Applicants elect Group II, with traverse. Applicants respectfully traverse the Restriction Requirement as it pertains to claims 36-40. Reconsideration and allowance of all claims are respectfully requested in view of the following remarks.

MPEP § 803 makes clear that there are two criteria for a proper requirement for restriction:

- (A) The inventions must be independent or distinct as claimed; and
- (B) There must be a serious burden on the examiner if restriction is required.

In our case, the Examiner posits, “In this case the process (Invention III) as claimed can be practiced by another materially different apparatus that does not require the axle to be rotatable. It is to be noted that the process (Invention III) requires a rotatable axle wheel but does not require the axle itself to be rotatable. The apparatus (Invention II) requires the axle to be rotatable.”

Applicants respectfully submit that this quoted characterization is incorrect because the only differences in wording between apparatus claim 36 and method claim 40 are (1) the preambles and (2) the addition of the word “providing” at the beginning of each method step in claim 40. Therefore, the Examiner’s assertion is unsupported because the claims are not materially different, and it is believed that they would not be patentable over one another. See, e.g., MPEP § 802.01. In addition, the burden is on the examiner to provide reasonable examples that recite material differences (MPEP § 806.05(e)), and such has not been shown.

For these reasons, a *prima facie* case for restriction, as defined in MPEP § 803 has not been presented and Applicants therefore respectfully request the Restriction Requirement be withdrawn regarding Groups II and III.

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Request for Interview

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly **requested to call** the undersigned at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 10-0270.

Respectfully submitted,



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Date: **February 18, 2005**

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: MAIL STOP Amendment
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Feb. 18, 2005
Terasa Johnson
Name

Terasa Johnson
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2/18/05
Date